

Challenges and Protests

Challenges

A challenge is defined as a written objection by any party interested in responding to either a bid or proposal (collectively referred to as solicitations), when that party wishes to have the City consider an addition, substitution or modification to the specifications stated in the outstanding solicitation.

The written challenge of the solicitation specifications must be filed with the Purchasing Manager located on the 12th Floor, Finance Department at City Hall, 455 N Main, Wichita, KS 67202, telephone number (316)268-4636, at least five (5) business days before the solicitation opening due date and time as listed on the solicitation documents. Any challenge to solicitation specifications received after the five (5) business days deadline will not be considered by the City. The Purchasing Manager will acknowledge receipt of the challenge. The written challenge is to include the name, address, email address and telephone number of the interested party, identification of the solicitation number and project title, a detailed statement of the reasons for the challenge, supporting evidence or documentation to substantiate any arguments, and the form of relief requested, e.g. the proposed addition, substitution or modification to the specifications. The Purchasing Manager will investigate the written challenge and any evidence or documentation submitted with the challenge.

In the event of a timely challenge of the solicitation specifications to the Purchasing Manager, the affected pending solicitation shall not proceed further until the challenge is resolved by Purchasing Manager decision. The Purchasing Manager will issue a written decision, which will be posted on the City's e-procurement website, <https://ep.wichita.gov>, for viewing by all interested parties. The decision rendered by the Purchasing Manager will be final.

Protests

A protest is defined as a written objection to a proposed award, or the award of a contract, with the intention of receiving a remedial result. In order to be considered valid, a protest must 1) come from an actual bidder or proposer for the contract, 2) who claims to be the rightful award recipient, 3) whose economic interest may be affected substantially and directly by the award of a contract or by the failure to award a contract. Suppliers or subcontractors to a bidder or proposer cannot file a valid protest. A valid protest can only be filed by a bidder or proposer which can show that it would be awarded the contract if the protest were successful. Therefore, all conditions numbered 1 through 3 listed above in this paragraph must be met.

The written protest for bids must be filed with the Contract Compliance Officer located on the 12th Floor, Finance Department, City Hall, 455 N Main, Wichita, KS prior to 9:00 a.m. of the Tuesday immediately following the posting of the notice of intent to award on the City's e-procurement website at <https://ep.wichita.gov> under the bid results tab. Failure of a protestor to file a written protest related to the award of a contract prior to the 9:00 a.m., Tuesday deadline will invalidate that protest and cause it not to be considered.

The written protest for proposals must be filed with the Contract Compliance Officer located on the 12th Floor, Finance Department, City Hall, 455 N Main, Wichita, KS prior to 5:00 p.m. on the third business day following the day of issuing an email or written notification of award. Failure of a protestor to file a written protest related to the award of a contract prior to 5:00 p.m. on the third business day deadline will invalidate that protest and cause it not to be considered.

The Contract Compliance Officer will acknowledge receipt of the written protest. The written protest is to include the name, address, email address and telephone number of the protestor, identification of the

solicitation number or contract number and project title, a detailed statement of the reasons for the protest which justify the relief sought, supporting evidence or documentation to substantiate any arguments, and a concise statement of the form of relief requested (e.g. reconsideration of the offer). All the above required information must be included in the protest at its submission. Untimely protests will be returned unopened. Incomplete protests will be rejected without consideration.

In the event of a valid, timely protest, the City shall not proceed with the execution of the contract until all City administrative remedies have been exhausted or waived, or until a determination is made that a contract award is required to protect the interests of the City.

The decision of the Contract Compliance Officer, based on review of the written protest and information available from City sources, will be rendered within ten (10) business days after receipt of protest, will recite the reasons for the decision, and be provided to the protestor by email or written notification.

The protestor may seek reconsideration of the decision of the Contractor Compliance Officer in writing to the Internal Auditor located on the 13th Floor, City Manager Office, City Hall, 455 N Main, Wichita, KS prior to 5:00 p.m. on the third business days following the day of issuing an email or written notification of decision. Failure of a protestor to file a written reconsideration request related to the Contract Compliance decision prior to 5:00 p.m. on the third business day deadline will invalidate that protest and cause it not to be considered. The Internal Auditor's decision will be issued by email or written notification within ten (10) business days after receiving the written reconsideration, unless this time for a response is extended in writing and agreeable by both parties.

The Internal Auditor's decision will be final, unless the protestor seeks a hearing before the City Council, by written request filed with the City Clerk, located on the 13th Floor, City Hall, 455 N Main, Wichita, KS, prior to 5:00 p.m. on the third business day following the day of issuing an email or written notification of the Internal Auditor's decision. Failure of a protestor to file a written reconsideration request related to the Internal Auditor's decision prior to 5:00 p.m. on the third business day deadline will invalidate that protest and cause it not to be considered.

If there is timely written reconsideration request, the protestor may seek reconsideration of the decision of the Internal Auditor by means of a hearing before the City Council. This hearing shall be in aid of the City Council's legislative authority to approve contracts for goods, services and public improvements on behalf of the City, and does not imply any due process right of the protestor in an unawarded, unexecuted contract. The hearing shall be scheduled as soon as practicable according to the City Council's calendar. The hearing shall be granted only upon such facts and issues as are presented in writing to the City Clerk for submission to City Council at or before noon on the Thursday preceding the scheduled hearing. No documents or other evidence shall be accepted at the hearing. The protesting party shall have available no more than 20 minutes for presentation of argument, followed by no more than 20 minutes of argument presented by City staff. The City Council may deliberate in executive session to seek the assistance of the City Attorney, but shall deliver its decision from the bench during the City Council meeting.

If a written protest is made against any proposed award or the award of a contract that relies in part on federal funding, then the Contract Compliance Officer shall notify the Granting Authority in writing with all information regarding the protest. **A protestor must exhaust all administrative remedies with the City of Wichita before pursuing a protest with the Granting Authority.** Protestors are put on notice that according to federal regulations, certain determinations made at the local level are not subject to appeal to the Granting Authority. If a review is granted by the Granting Authority, it will be limited to:

- (1) the City of Wichita's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) violations of Federal law or regulations.

The Contract Compliance Officer will provide notice to the Granting Authority Regional Office or Headquarters Office of any request for reconsideration before the Internal Auditor, and also provide notice of the decision rendered by the Internal Auditor, or any alternative resolution reached.